82-647

No. 82-

Office - Supreme Court, U.S.
FILED
OCT 12 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

~~BABY GIRL S., and~~ DONALD J. KIRKPATRICK,

Petitioners,

—VS.—

CHRISTIAN HOMES OF ABILENE, INC., and the 326th DISTRICT COURT OF TAYLOR COUNTY, TEXAS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

Of Counsel:

SAM MOORE
Robinson, Hanna, Moore & Holloway, Inc.
P.O. Box. 3819
Abilene, Texas 79604

MARY F. KELLER
Texas Civil Liberties Union
600 W. 7th Street
Austin, Texas 78701

BURT NEUBORNE
Counsel of Record
MARCIA LOWRY
ISABELLE PINZLER
GEORGE KANNAR
MICHAEL MUSHLIN
American Civil Liberties Union Foundation
132 W. 43rd Street
New York, New York 10036
Telephone: (212) 944-9800

QUESTIONS PRESENTED FOR REVIEW

1. May Texas terminate the parent-child relationship between a concerned and competent parent and his infant out-of-wedlock daughter without demonstrating either parental unfitness or any potential harm to the child pursuant to the conclusory standard of best interests of the child?

2. May Texas apply an unfitness standard to termination proceedings involving both in-wedlock fathers and out-of-wedlock mothers, but apply a best interests of the child standard in termination proceedings involving out-of-wedlock fathers seeking to fulfill their parental responsibilities?

3. May Texas require an out-of-wedlock father to satisfy a burden of proving

that his child's best interests would be served by recognizing him as a "legal" as well as a biological father?

THE PARTIES

The parties to this proceeding are listed in the caption. Throughout these proceedings, the child in question has been referred to as Baby Girl S.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED ..... -i-

TABLE OF AUTHORITIES ..... -iii-

OPINIONS BELOW ..... -x-

JURISDICTION..... -x-

CONSTITUTIONAL PROVISIONS ..... -xi-

STATUTES INVOLVED .....-xii-

STATEMENT OF THE CASE 1

REASONS FOR GRANTING THE WRIT

I. THE SUBSTANTIVE STANDARD UTILIZED BY TEXAS TO TERMINATE PETITIONER'S PARENT-CHILD RELATIONSHIP IS VIOLATIVE OF DUE PROCESS OF LAW BECAUSE

(A) IT FAILS TO REQUIRE A SHOWING OF PARENTAL UNFITNESS AND POTENTIAL HARM TO THE CHILD; AND 15

(B) IT IS WHOLLY CONCLUSORY AND, THUS, IS UNCONSTITUTIONALLY VAGUE 22

II. THE IMPOSITION OF A BEST INTEREST STANDARD ON PETITIONER EFFECTS A DUAL DISCRIMINATION ON GROUNDS OF SEX AND ILLEGITIMACY IN CONFLICT WITH THIS COURT'S REASONING IN CABAN v. MOHAMMED AND GOMEZ v. PEREZ 28

III. THE TEXAS STATUTORY SCHEME IS FLATLY INCONSISTENT WITH SANTOSKY v. KRAMER BECAUSE IT PLACES THE BURDEN OF PROOF ON THE PARENT WHO IS THE TARGET OF THE TERMINATION PROCEEDING 39

CONCLUSION 41

APPENDIX A-1

Findings of Fact and Conclusions of Law of the District Court of Taylor County, Texas A-1

Opinion of Texas Court of Civil Appeals A-5

Order of Texas Supreme Court Denying Writ of Error A-20

Order of Texas Supreme Court Denying Rehearing A-21

TABLE OF AUTHORITIES

Pages

CONSTITUTION

U.S. Const. Amend. XIV ..... passim

FEDERAL STATUTES

28 U.S.C. §1257(3) 9

TEXAS STATUTES

Tex. Fam. Code Ann. § 13.08
(Vernon Cum. Supp. 1981) 2

Tex. Fam. Code Ann. § 13.21
(Vernon Cum. Supp. 1981) 2, 3, 8, 13, 15 27, 29

Tex. Fam. Code Ann. § 15.02
(Vernon Cum. Supp. 1981) 1

CASES

Belloti v. Baird,
443 U.S. 622 (1979) 26

Caban v. Mohammed,
441 U.S. 380 (1979) 10, 11, 12, 17, 18, 20, 21, 28, 29, 32, 33, 37

Cleveland Board of Education v.
LaFleur, 414 U.S. 632 (1974) 17

Colautti v. Franklin,
439 U.S. 379 (1978) 23

Craig v. Boren,
429 U.S. 190 (1976) 30

Doe and Roe v. Delaware, prob.
jur. noted, 445 U.S. 942 (1980),
app. dism. for want of a proper-
ly presented federal question,
450 U.S. 382 (1981) 10

Gomez v. Perez,
409 U.S. 535 (1973) 33, 35,
38

Hynes v. Mayor of Oradell
425 U.S. 610 (1976) 23

In the Interest of T.E.T.,
603 S.W.2d 793 (Tex.)
cert. den. sub. nom. Oldag
v. Catholic Charities,
450 U.S. 1025 (1980) 29, 31,
34

In Re William,
477 Pa. 322, 383 A.2d 1228 10

Johnson v. J.O.L.
Cert. granted, 449 U.S. 818
judgment vacated and case
remanded, 449 U.S. 989 (1980) 10

Kirchberg v. Feenstra,
450 U.S. 455 (1981) 30

Lalli v. Lalli,
439 U.S. 259 (1978) 37

Lanzetta v. New Jersey,
306 U.S. 451 (1939) 24

Lassiter v. Department of
Social Services, 452
U.S. 18 (1981) 11, 15
16, 17

Lehman v. Lycoming County
Children's Services Agency,
439 U.S. 880 (1978) 11

Lehman v. Lycoming County
Children's Services Agency,
73 L.Ed.2d 928 (1982) 10

Mathews v. Lucas,
427 U.S. 495 (1976) 37

Mills v. Habluetzel,
71 L.Ed.2d 770 (1982) 35, 37
38

Mississippi University of
Women v. Hogan, 73 L.Ed.2d
1090 (1982) 30

Moore v. East Cleveland,
431 U.S. 494 (1977) 11, 17

O'Brien v. Skinner,
414 U.S. 524 (1974) 32

Orr v. Orr,
440 U.S. 268 (1979) 31

Papachristou v. City of Jackson-
ville, 405 U.S. 156 (1972) 25

Personnel Administrator of Massachusettes v. Feeney, 442 U.S. 256 (1979) 30

Prince v. Massachusetts, 321 U.S. 158 (1944) 11, 17

Quilloin v. Walcott, 434 U.S. 246 ..... 10, 18, 19, 20

Santosky v. Kramer, 71 L.Ed.2d 599 (1982) 11, 14, 15, 17, 18, 21, 27, 39, 40

Smith v. Goguen, 415 U.S. 566 (1974) 23

Smith v. Organization of Foster Families, 431 U.S. 816 (1977) 10, 17, 26

Stanley v. Illinois, 405 U.S. 645 (1972) 10, 17, 18

Stanton v. Stanton, 421 U.S. 7 (1975) 31

Trimble v. Gordon, 430 U.S. 762 (1977) 37

Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972) 37

Weinberger v. Weisenfeld,
420 U.S. 636 (1975) 31

Youngstown Sheet & Tube Co.
v. Sawyer, 343 U.S. 579
(1952) 26

Zablocki v. Redhail,
434 U.S. 374 (1978) 17

MISCELLANEOUS

Note, "The Void for Vagueness
Doctrine in the Supreme Court",
109 U.Pa.L.Rev. 67 (1960) 23

OPINIONS BELOW

The opinion of the Texas Court of Civil Appeals is reported at 628 S.W.2d 261 (Tex. Ct. App. 1982) and is set forth in Petitioner's Appendix at pp. A-5 through A-17. The Texas Supreme Court did not issue an opinion. Its orders denying a writ of error and denying rehearing are set forth in Petitioner's Appendix at A-20 and A-21, respectively.

JURISDICTION

The jurisdiction of this Court is conferred by 28 U.S.C. §1257(3) to review an order of the Supreme Court of Texas entered July 14, 1982 denying rehearing of an order denying a writ of error entered June 16, 1982.

CONSTITUTIONAL PROVISIONS

AMENDMENT IV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTE INVOLVED

Texas Family Code §13.21. Voluntary Legitimation.

(a) If a statement of paternity has been executed by the father of an illegitimate child, the father or mother of the child or the Texas Department of Human Resources may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

(b) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:

(1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;

(2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and

(3) the mother or the managing conservator, if any, has consented to the decree.

(c) The requirement of consent of the mother is satisfied if she is the petitioner. If the entry of the decree is in the best interest of the child, the court may consent to the legitimation of the child in lieu of the consent of the mother or managing conservator.

(d) A suit for voluntary legitimation may be joined with a suit for termination under Chapter 15 of this code.

(e) A suit under this section may be instituted at any time.

STATEMENT OF THE CASE

In this case Texas asserts power to sever the parental relationship between a concerned and competent father anxious to assume his parental responsibilities and his out of wedlock infant daughter solely because the father has failed to persuade a judge that the best interests of the child would be served by recognizing him as a "legal" parent.

Under Texas law, a "legal" parent's relationship with his or her child may not be terminated by the State in the absence of a specific finding of parental unfitness. Texas Family Code, §15.02. The biological father of a child born out of wedlock is not, however, a "legal" parent in Texas unless and until a court enters an order of legitimation. Legitimation may take place involuntarily pursuant to a

proceeding against the father designed to establish his obligation of support, Texas Family Code §13.08; or voluntarily, pursuant to a proceeding initiated by the father. Texas Family Code, §13.21. If, in response to a father's legitimation petition, the mother withholds her consent -- often, as in this case, because she wishes to place the child for adoption with third persons -- the biological father will not be granted the status of a "legal" parent unless he carries the burden of persuading the court that legitimation would be in the best interest of the child. Texas Family Code §13.21(c).

The father in such a setting may, therefore, be deprived of the ability to raise his child, not because he has been found unfit, but solely because he has failed to satisfy the virtually

standardless burden of proof which Texas law imposes upon him.

The petitioner in this case is the father of an infant girl born out of wedlock on January 11, 1981 whose mother relinquished her at birth for adoption. When Christian Homes of Abilene, Inc., moved to confirm the natural mother's relinquishment for adoption, petitioner cross-moved for an order of voluntary legitimation in order to raise the child himself. Texas Family Code, §13.21(a). The trial was held on August 18, 1981, and the state court appellate process was completed on July 14, 1982.

The record in the trial court[1]

---

[1]The findings of fact and conclusions of law of the trial court are set forth in the Appendix at pp. A-1 through A-4. The opinion of the Texas Court of Civil Appeals is set forth in the Appendix at pp. A-5

establishes that petitioner is a 25 year-old farmer who resides in York County, Nebraska, who has repeatedly sought to accept full parental responsibility for the raising of his child.

When petitioner learned that the child's mother, who was 16 years old at the time of trial, might be pregnant, he immediately asked her to marry him. (Tr. 16, 41) Her parents refused to give their permission and, instead, sent the young woman to a home for unwed mothers, operated by Christian Homes of Abilene, Inc., in Texas.

---

[1](continued)

through A-17. The orders of the Supreme Court of Texas denying review and rehearing are set forth at pp. A-20 and A-21. Citations to the Transcript of Proceedings in the trial court are denominated (Tr.___). Citations to petitioner's Appendix are denominated (A-___).

(Tr. 128) Petitioner then tried, unsuccessfully, to pay the mother's expenses at the home, sent her money, and corresponded with her regularly. (Tr. 24, 63, 86) He continually expressed his love for his child and when he learned that the child's mother was planning to relinquish the baby for adoption, made it clear that he wanted to raise the baby himself. (Tr. 30, 44)[2] After the baby was born, he began depositing money for his child's support with the court. (Tr. 80-81) At trial, petitioner testified:

All I can say is I love my daughter

---

[2]The natural mother had sought to persuade petitioner to consent to the adoption by telling him often throughout her pregnancy, "If you don't give this child up for adoption, you don't love me." (Tr. 27) Despite these entreaties, which caused him to waver on occasion (Tr. 74), petitioner refused to consent to relinquishment of his parental status. (Tr. 74)

> and I want her, and she's blood, and I just can't see letting her go when I want to raise her myself. (A-7)

Petitioner lives with his parents and two sisters on the family farm in Nebraska. He has lived there his entire life and will eventually inherit an interest in the farm. His parents testified that they would help their son raise their grandchild. (Tr. 100, 101, 104, 117). At the request of the trial court, an investigation of petitioner's home was conducted by a Nebraska social worker who concluded that petitioner could adequately care for his daughter (Tr. 188) and that he suffered from a medically controlled form of epilepsy (Tr. 37, 106).

The child's 16 year old mother testified that she was withholding her consent to the baby's legitimation because she wanted the child adopted by "two Christian

parents." (Tr. 54-55) She acknowledged that petitioner is "a wonderful man . . . a good man, a hard worker" (Tr. 63), but testified that he would not be as well suited to raise his daughter as would adoptive parents because he is often unclean after working in the fields, smokes, uses bad language on occasion, does not keep his home clean and lacks her religious conviction. (Tr. 35-37) Her father also testified that the baby's presence in the natural mother's home town in Nebraska would constitute an embarrassment to the family. (Tr. 151)

No evidence was presented even suggesting that petitioner is unfit to raise his child or that she would suffer any harm as a consequence of being raised by her biological father.

On September 27, 1981, the trial court entered judgment denying petitioner's request for legitimation based solely on a conclusory finding that "It is not in the best interest of the child for this court to consent to the legitimation . . ." (A-2) Unless reversed, the decision of the trial court means that petitioner's infant daughter will be subject to adoption by unknown third persons.

Petitioner appealed to the Texas Court of Civil Appeals for the Eleventh Judicial District on the grounds that the decision of the trial court was against the weight of the evidence and that Texas Family Code §13.21 violates an unwed father's rights under the equal protection and the due process clauses of the Fourteenth Amendment. On February 11, 1982, the Court of Civil Appeals affirmed the trial court's judgment.

(A 5-17) On June 16, 1982, the Texas Supreme Court denied petitioner's application for a writ of error concerning inter alia, his Fourteenth Amendment due process and equal protection claims, and on July 14, 1982, denied his petition for rehearing. (A-20, 21). The timely filing of this petition pursuant to 28 U.S.C. §1257(3) followed.

REASONS FOR GRANTING THE WRIT

This case poses with special poignancy an unsettled constitutional question of extraordinary importance which this Court has frequently noted, but never squarely confronted:[3] What is the minimum substantive standard pursuant to which a State may terminate a parent-child relationship?

---

[3]This Court has alluded to the problem of defining a constitutionally acceptable substantive standard in parent-child termination proceedings on numerous occasions. E.g. Stanley v. Illinois, 405 U.S. 645 (1972); Smith v. Organization of Foster Families, 431 U.S. 816 (1977); Quilloin v. Wolcott, 434 U.S. 246 (1978); Caban v. Mohammed, 441 U.S. 380, 394 n.16 (1979). See also, Doe and Roe v. Delaware, prob. jur. noted, 445 U.S. 942 (1980), app. dism. for want of a properly presented federal question, 450 U.S. 382 (1981); Johnson v. J.O.L., cert. granted, 449 U.S. 818, (1980), judgment vacated and case remanded, 449 U.S. 989, (1980). See generally, Lehman v. Lycoming County Children's Services Agency, U.S. , 73 L.Ed.2d 928 (1982); In re William, 477 Pa. 322, 383 A.2d 1228 cert.

Given the concededly protected nature of the parent-child relationship, it is clear that some constitutionally imposed minimum threshold must be crossed by the State before the relationship may be terminated. What is not clear is the precise nature of that threshold.[4] In Lassiter v. Department of Social Services, 452 U.S. 18 (1981) and Santosky v. Kramer, ___U.S.___ 71 L.Ed.2d 599 (1982), this Court clarified the procedural safeguards which must accompany an attempt to sever a parent-child relationship. Procedural safeguards

---

[3](continued)

den. sub. nom., Lehman v. Lycoming County Children's Services Agency, 439 U.S. 880 (1978). See generally, Prince v. Massachusetts, 321 U.S. 158 (1944); Moore v. East Cleveland, 431 U.S. 494 (1977).

[4]See, Caban v. Mohammed, 441 U.S. 380, 414-415 (1979) (Stevens, J., Burger Ch.J. and Rehnquist J., dissenting).

cannot operate effectively, however, when confusion reigns as to the appropriate substantive standard. Since the "best interest" standard used by the court below is both unduly permissive[5] and wholly conclusory,[6] it fails to satisfy the constitutional minimum imposed by the Due Process Clause.

Moreover, whatever substantive standard a State adopts to govern the termination of a parent-child relationship, the Equal Protection Clause requires that it be fairly applied across the spectrum of parent-child relationships. Caban v. Mohammed, 441 U.S. 380 (1979). Texas effects a dual discrimination in the

---

[5] See, infra at pp. 16-22.

[6] See, infra at pp. 22-27.

application of its substantive standard. "First, children born in wedlock may be the subject of a termination petition only if their parents are shown to be "unfit", while children born out of wedlock may be permanently separated from their fathers pursuant to a vague and conclusory "best interest" test. Texas Family Code §13.21(c). Second, mothers of out of wedlock children may be the subject of a termination proceeding only if they are shown to be unfit, while fathers of children born out of wedlock are subject to the amorphous "best interest" test. Thus, the Texas practice discriminates on the basis of sex[7] and illegitimacy[8] in the choice of a governing

---

[7] See, infra, at pp. 28-34.

[8] See, infra, at pp. 34-38.

standard in parent-child termination proceedings. Where, as here, a parent has made every effort to assume responsibility for the care and upbringing of his child, such discrimination cannot pass constitutional muster.

Finally, in Santosky v. Kramer, ___U.S.___ 71 L.Ed.2d 599 (1982), this Court ruled that the due process clause requires the State to satisfy its persuasion burden in a termination proceeding by clear and convincing evidence. The Texas procedure at issue herein not only fails to require the State to establish its case by clear and convincing evidence, it actually places the persuasion burden on the parent in flat disregard of Santosky.

I. THE SUBSTANTIVE STANDARD UTILIZED BY TEXAS TO TERMINATE PETITIONER'S PARENT-CHILD RELATIONSHIP IS VIOLATIVE OF DUE PROCESS OF LAW BECAUSE

(A) IT FAILS TO REQUIRE A SHOWING OF PARENTAL UNFITNESS AND POTENTIAL HARM TO THE CHILD; AND

(B) IT IS WHOLLY CONCLUSORY AND, THUS, IS UNCONSTITUTIONALLY VAGUE.

This Court has repeatedly stressed the basic social and personal importance of the parent-child relationship, and the concomitant constitutional necessity for exceptionally precise and careful fact-finding whenever the state seeks to end that relationship. See, e.g., Lassiter v. Department of Social Services, 452 U.S. 18 (1981); Santosky v. Kramer, ___U.S.___ 71 L.Ed.2d 599 (1982). Yet, in stark contrast, the Texas statute at issue in this case, Texas Family Code §13.21, permits the state to terminate the bond between a loving parent who wishes to

assume his parental responsibilities and his infant daughter without any showing of potential harm to the child, and without providing any directions to guide or control the judicial decision-maker's discretion beyond the requirement that his decision accord with his own personal and subjective sense of what is in the child's immediate "best interest." This statute, which allows a court to work a "unique kind of deprivation," Lassiter, supra, 452 U.S. at 27, raises two serious due process issues which deserve plenary consideration by this Court.

A. A State May Not Terminate The Relationship Between A Competent and Caring Biological Parent And His Or Her Child Without Showing Parental Unfitness.

The Court has long adhered to the principle that the parent-child bond is a fundamental human relationship with which

the state may interfere only when it asserts a powerful justification and then only in the least intrusive manner. E.g. Prince v. Massachusetts, 321 U.S. 158 (1944); Moore v. East Cleveland, 431 U.S. 494 (1977); Smith v. Organization of Foster Families, 431 U.S. 816 (1977); Lassiter v. Department of Social Services, supra; Santosky v. Kramer, supra; Stanley v. Illinois supra; Zablocki v. Redhail, 434 U.S. 374 (1978); Cleveland Board of Ed. v. LaFleur, 414 U.S. 632 (1974).[9]

---

[9] The Court has repeatedly emphasized that the right to a parent-child relationship is a reciprocal one, inhering in both parent and child, Smith v. Organization of Foster Families, supra at 846, and has made clear that this interest is not automatically diminished because the parent involved in a given case may be a father concerned with his illegitimate child. See, e.g. Stanley v. Illinois, supra at 651-52; Caban v. Mohammed, 441 U.S. 380 (1979).

Obviously, if the State demonstrates that a parent is unfit, the State may have both a right and a duty to act to terminate the parental relationship.[10] Equally obviously, if a parent has virtually abandoned a child, his or her claim to continued nominal parental status is hardly persuasive. Quilloin v. Wolcott, 434 U.S. 246 (1978). Thus, in Caban, this Court noted:

> In those cases where the father never has come forward to participate in the rearing of a child, nothing in the Equal Protection Clause precludes the State from withholding from him the privilege of vetoing the adoption of that child." 441 U.S. at 392.

---

[10] Of course, the drastic expedient of parental termination must be surrounded by strict procedural safeguards, e.g. Stanley v. Illinois, 405 U.S. 645 (1972); Santosky v. Kramer, ___ U.S. ___, 71 L.Ed.2d 599 (1982) and should take place only if less drastic means of repairing the fabric of the family are unavailing.

However, when the State has demonstrated neither unfitness, nor potential harm to the child nor parental default, it lacks power to sever a biological relationship between a loving father and his infant daughter merely because a judge thinks that the child's best interest would be served by raising that daughter in a two-parent Christian home. In Quilloin v. Wolcott, 434 U.S. 246 (1978), this Court made clear that the permissive standard which governs the termination of parents who have virtually abandoned their children cannot be constitutionally applied to parents who have demonstrated both the willingness and the ability to accept parental responsibility.[11] Thus, without squarely

---

[11] Quilloin v. Wolcott, supra, at 255.

ruling on the point, this Court expressed "little doubt" in Quilloin:

> ...that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the child's best interest. 434 U.S. at 255.

Similarly, in Caban v. Mohammed, 441 U.S. 380 (1979), Justice Stevens noted that while a best interest standard may govern termination cases where an absentee father has taken no steps to legitimate his child, the Due Process Clause may well require a more rigorous standard when the State seeks to move against a father like the petitioner, who has gone to extraordinary lengths to

accept parental responsibility. Caban v. Mohammed, supra, at 415-16 (Stevens, J., Burger, Ch.J. and Rehnquist, J., dissenting).

Finally, in Santosky v. Kramer, ___U.S.___, 71 Ed.2d. 599 (1982), four members of this Court assumed that the remaining five:

> ...probably would balk at a state scheme that permitted termination of parental rights on a clear and convincing showing merely that such action would be in the best interests of the child. See Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 862-63 (1977)(Stewart, J., concurring). ___U.S. at ___, 71 L.Ed.2d at 619 (Rehnquist, J., Burger, Ch.J., White, J. and O'Connor, J. dissenting).[12]

In cases like this, where a father

---

[12] Texas not only fails to require proof by clear and convincing evidence; it actually shifts the persuasion burden on the best interests issue to the father. See infra at 39.

admits paternity and is both willing and able to assume full parental responsibility, the State must make more than the flimsy showing below to justify the drastic expedient of terminating a parental relationship. Unlike settings where an unwed father is either unable or unwilling to assume full parental responsibility, petitioner offers his child a stable, concededly adequate, home. No State interest whatever exists to justify the termination of petitioner's parental relationship with his daughter.

B. The Best Interest Standard is Unconstitutionally Vague In The Context Of Termination Proceedings.

When the State seeks to terminate a parent-child bond it intrudes upon one of the most intensely protected relationships known to our legal and social system. When the State seeks to act in so sensitive an

area, traditional principles of constitutional law require that it define the governing substantive standard with care and precision. E.g. Hynes v. Mayor of Oradell, 425 U.S. 610 (1976); Smith v. Goguen, 415 U.S. 566 (1974). See also, Colautti v. Franklin, 439 U.S. 379 (1978). See generally, Note, The Void for Vagueness Doctrine in the Supreme Court, 109 U.Pa.L. Rev. 67 (1960). One can hardly imagine a standard more violative of the void-for-vagueness doctrine than the wholly conclusory "best interest of the child" standard applied in this case. Devoid of objective meaning, the best interest standard (if it can be called a standard at all) is merely an invitation to subjective decision-making.

This Court has recognized that the ban on vague statutes which impinge upon

significant constitutional values is designed to effectuate three policies.

First, the void-for-vagueness doctrine assures that the target of adverse government action will be given fair notice. E.g., Lanzetta v. New Jersey, 306 U.S. 451 (1939). Were petitioner to have scrutinized the Texas statute at issue herein, he would have been utterly unable to ascertain what Texas wished him to do in order to persuade the court to allow him to raise his child. In effect, petitioner has lost his child without ever having been told why.

Second, the vagueness doctrine is designed to prevent the arbitrary, unequal and discriminatory application of the law by insisting upon objective criteria calculated to limit the discretion of implementing

officials. E.g. Smith v. Goguen, 415 U.S. 566 (1974); Papachristou v. City of Jacksonville, 405 U.S. 156 (1972). Unfortunately, however, the wholly conclusory nature of a best interest standard for termination virtually invites the arbitrary, unequal and discriminatory application of the law: Arbitrary, in that the standard is purely subjective in nature; unequal, in that the standard will necessarily vary radically from one judge to another; and discriminatory, in that the standard validates the role of subjective prejudice and stereotypical thinking in the termination process.

Third, the vagueness doctrine is a modern analogue of the traditional ban on excessive legislative delegation. An overly vague statute necessarily delegates the power to make law to an executive or, as

here, a judicial official. Where, as here, the law impinges on a fundamental value, classic separation of powers analysis insists that the policy be articulated by a legislative body. Cf., Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). Thus, the best interest standard effectively transfers the power to enunciate policy governing parent-child termination from the legislature, where it belongs, to the judiciary, where it does not.

Since the use of a best interest standard in parent-child termination cases[13]

---

[13] This Court has repeatedly noted the serious vagueness problems inherent in a best interest termination standard. E.g. Smith v. Organization of Foster Families, 431 U.S. 816 (1977) at 835, n.36 ("judges... may find it difficult, in utilizing vague standards like 'the best interests of the child' to avoid decisions resting on subjective values"); Belloti v. Baird, 443 U.S. 628 (1979) at 655-56 (a best interest

violates all three policies advanced by the void-for-vagueness doctrine, this Court should invalidate Section 13.21 of the Texas Family Code as void-for-vagueness.[14]

---

13 (continued)

"standard provides little real guidance to the judge...[whose] decision must necessarily reflect personal and societal values and mores whose enforcement is fundamentally at odds with privacy interests.") (Stevens, Brennan, Marshall and Blackman, JJ. concurring). See also, Santosky v. Kramer, supra at 612 (vague standards leave trial judges "unusual discretion to underweigh probative facts that might favor the parent").

[14] It is unnecessary in this case to consider whether the best interest standard would remain an appropriate basis for resolving custody disputes between biological parents or for less drastic intrusions into the parent-child relationship such as temporary removal. This case poses the narrow issue of whether a best interest standard may govern a termination proceding aimed at a parent anxious to assume his parental responsibilities.

II. THE IMPOSITION OF A BEST INTEREST STANDARD ON PETITIONER EFFECTS A DUAL DISCRIMINATION ON GROUNDS OF SEX AND ILLEGITIMACY IN CONFLICT WITH THIS COURT'S REASONING IN CABAN v. MOHAMMED AND GOMEZ v. PEREZ.

A. The Texas Statutory Scheme Incorporates An Impermissible Gender Bias.

The Texas Supreme Court's refusal to grant a writ of error in the instant case stands in conflict with this Court's reasoning in Caban v. Mohammed 441 U.S. 380 (1979), which invalidated a New York statute permitting an unwed mother, but not an unwed father, to bar the adoption of their illegitimate child. In Caban, as here, the identity of the father in question was known, and he had manifested signficant parental interest in the child. 441 U.S. at 394. The Court in Caban gave great deference to the important governmental interest in providing for the well being

of illegitimate children but held that the "unquestioned right of the State to further these desirable ends . . . is not in itself sufficient to justify the gender based distinction. . . ." 441 U.S. at 391. The statute at issue here is almost identical to the one invalidated in Caban:[15] both prevent a fit unwed father from retaining his parental rights to his child unless he can persuade a court that, under the vague "best interests of the child" standard, the child's adoption is not appropriate.

---

[15] The Texas Supreme Court has held that Texas, unlike New York, permits an unwed father to seek to legitimate his child without the mother's consent. If successful, the father then has the right to block an adoption. In Interest of T.E.T., 602 S.W.2d 793, cert. den. sub. nom., Oldag v. Catholic Charities, 450 U.S. 1025 (1981)(Brennan, Marshall, and White, JJ. dissenting from the denial of certiorari). That court overlooked, however, that under Texas law the legitimation petition will not be granted over the mother's objection without a finding that it is in the

In order to survive, a gender based distinction must be closely and substantially related to the achievement of an important governmental objective. Craig v. Boren, 429 U.S. 190 (1976). The proponent of a facial gender distinction must bear the burden of showing an "exceedingly persuasive justification for the classification." Mississippi University of Women v. Hogan, 73 L.Ed.2d 1090, 1098 (1982), quoting Kirchberg v. Feenstra, 450 U.S. 455, 461 (1981); Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 273 (1979).

The Texas statute here challenged, however, is based upon the twin assumptions

---

15 (continued)
best interests of the child to do so. Texas Family Code §13.21(c). Thus, under both the New York and the Texas statutory schemes, unwed fathers, but not unwed mothers, can be deprived of parental rights without a showing of unfitness pursuant to an amorphous best interest standard.

that (1) all unwed fathers are "sperm donor[s], rapist[s], hit and run lover[s], adulterer[s], or the like", see T.E.T., 603 S.W.2d at 797, or, at best, unloving and disinterested in their children; and (2) that unwed mothers, by contrast, are nurturing and caring, or at least may be trusted (unlike the fathers) to have the best interests of the child at heart. With these assumptions at its core, this statute is freighted with the "baggage of sexual stereotypes" so often condemned by this Court. Orr v. Orr, 440 U.S. 268, 283 (1979); Weinberger v. Wiesenfeld, 420 U.S. 636, 645 (1975); Stanton v. Stanton 421 U.S. 7, 14 (1975). The harm done to caring fathers such as petitioner is patent. Less obvious but equally invidious is the harm done to women by the perpetuation of such

stereotypes. As a result, women are inevitably locked into the childcare role, unable to share childrearing responsibilities equally with men.

The rationale offered by the court below is that the statute distinguishes between fathers who have accepted the legal and moral commitment of the family and fathers who do not. In the Interest of T.E.T., supra 603 S.W.2d at 797. But utilizing a sex-based classification that excludes all unwed fathers of infants, including those such as petitioner who have eagerly sought parental responsibility for their children, does not rationally serve the stated objectives of fostering such assumption of paternal responsibility and protecting illegitimate children. Instead, the Texas Family Code has the anomalous

effect of granting greater parental rights to a putative father who denied paternity, lacks any interest in his child and was brought into court against his will, than to a putative father such as the petitioner who acknowledged paternity and parental responsibility from the beginning and who voluntarily came forward to legitimate his child.[16]

This case presents the very injustice the majority in Caban sought to preclude:

> The effect of [the State's] classification is to discriminate against unwed fathers even when their

---

[16] A father who is the subject of an involuntary legitimation petition will become, under Texas law, a "legal" parent whose rights may not be terminated except upon a showing of unfitness. Fathers like the petitioner who voluntarily seek to legitimate their children are subjected to a far more permissive best interest standard. Such an irrational discrimination cannot withstand any level of judicial scrutiny. Cf. O'Brien v. Skinner, 414 U.S. 524 (1974).

> identity is known and they have manifested significant paternal interest in the child. The facts of this case illustrate the harshness of classifying unwed fathers as being invariably less qualified and entitled than mothers to exercise a concerned judgment as to the fate of their children. [The statute] both excludes some loving fathers from full participation in the decision whether their children will be adopted and at the same time enables some alienated mothers arbitrarily to cut off the paternal rights of fathers. 441 U.S. at 394.

In Caban, as here, such an undifferentiated gender distinction between unwed parents bears no discernible relationship to the state's legitimate interests.

B. The Texas Statutory Scheme Invidiously Discriminates Against Illegitimate Children.

This Court held in Gomez v. Perez, 409 U.S. 535, 538 (1973), that under the Equal Protection Clause of the Fourteenth Amendment, "a State may not invidiously

discriminate against illegitimate children by denying them substantial benefits accorded children generally." In direct conflict with principles expressed in Gomez, the Texas statutory scheme upheld below invidiously discriminates against illegitimate children by denying them the opportunity to enjoy a family relationship with their biological fathers which is afforded legitimate children.

In its legitimation and adoption provisions Texas unlawfully continues, even after Gomez and its progeny,[17] to slight the fundamental rights of illegitimate children to the care and support of their biological fathers. The Texas statutory

---

[17] See discussion in Mills v. Habluetzel, ___U.S.___, 71 L.Ed.2d 770, 773-76, (1982).

scheme, so frequently in need of correction by this Court, invidiously discriminates against Baby Girl S. by denying her the relationship with her natural father which she would enjoy if legitimate. In the instant case, because the mother surrendered her parental rights, Baby Girl S. has the companionship of only one biological parent available to her, yet she has been precluded from that relationship solely because she is illegitimate. The nature of Baby Girl S.' opportunity for a relationship with her natural father thus rests completely on her status of birth. By imposing a distinction between an illegitimate child with a willing, loving father and a legitimate child with such a father, the state of Texas imposes "disabilities on the illegitimate child...contrary to the basic concept of our system that burdens

should bear some relationship to individual responsibility or wrong doing." Weber v. Aetna Casualty Surety Co., 406 U.S. 164, 175 (1972).

Distinctions on the basis of legitimacy cannot survive equal protection scrutiny where they are not "substantially related to a legitimate state interest." Mills v. Habluetzel, supra at 778; Lalli v. Lalli, 439 U.S. 259, 265 (1978); Trimble v. Gordon, 430 U.S. 762, 767 (1977); Mathews v. Lucas, 427 U.S. 495, 519 (1976). Because the Texas statutory scheme deprives Baby Girl S. of a source of support and care available to all other children, it effectively undermines the asserted governmental interest, recognized in Caban, of providing for the well being of illegitimate children -- an interest which this court has found frustrated by other discriminatory

provisions in the Texas Family Code. See Mills v. Habluetzel, supra; Gomez v. Perez, supra.[18]

---

[18]The State's only substantial interest in this area -- the facilitation of the adoption of illegitimate children who would, otherwise, be without a stable home -- is not present in this case since petitioner is concededly willing and able to assume full parental responsibility for his daughter, including the provision of a home certified as adequate by a social worker commissioned by the Texas court itself.

III. THE TEXAS STATUTORY SCHEME IS FLATLY INCONSISTENT WITH SANTOSKY v. KRAMER BECAUSE IT PLACES THE BURDEN OF PROOF ON THE PARENT WHO IS THE TARGET OF THE TERMINATION PROCEEDING.

In Santosky v. Kramer, ___U.S.___, 71 L.Ed.2d 599 (1982), this Court ruled that the State must prove its case in a termination proceeding by clear and convincing evidence. The Texas statutory scheme places the persuasion burden on an unwed father seeking to block the adoption of his child by requiring him to establish that the best interest of the child would be advanced by granting the father's legitimation petition. As Justice Rehnquist noted in his dissent in Santosky, even if the State were required to prove by clear and convincing evidence that Baby Girl S.' best interest would be served by adoption by strangers rather than legitimation by

her father, the statute would raise serious constitutional issues of substantive due process. ___U.S.___, ___, 71 L.Ed.2d 599, 619 (1982). Where, as here, the State refuses to shoulder its constitutionally mandated burden of proof and, instead, insists upon shifting the persuasion burden to the parent, its action is constitutionally indefensible.

CONCLUSION

For the above-stated reasons, this petition for certiorari should be granted. Petitioner respectfully suggests that summary reversal may be appropriate.

Respectfully submitted,

Burt Neuborne
Counsel of Record
Marcia Lowry
Isabelle Pinzler
George Kannar
Michael Mushlin
American Civil Liberties
Union Foundation
132 W. 43rd Street
New York, New York 10036
Telephone: (212) 944-9800

Of Counsel:

Sam Moore
Robinson, Hanna, Moore &
Holloway, Inc.
P.O. Box 3819
Abilene, Texas 79604

Mary F. Keller
Texas Civil Liberties
Union
600 W. 7th Street
Austin, Texas 78701

No. 5038-C

IN THE INTEREST	:	IN THE 326th DISTRICT COURT OF TAYLOR
OF	:	COUNTY, TEXAS
BABY GIRL SCHULZ, A CHILD	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above captioned cause came on for trial before the Court without a jury on the 28th day of August, 1981. All parties and their attorneys were present. After considering the pleadings, the evidence, and the argument of counsel, the Court, in response to a request from the Respondent Cross-Petitioner, Donald J. Kirkpatrick, makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. The child the subject of this suit is:

NAME: Baby Girl Schulz SEX: Female
BIRTHPLACE: Abilene, Taylor County, Texas BIRTHDATE: January 11, 1981

PERMANENT RESIDENCE: Abilene, Taylor County, Texas

2. The mother of the child the subject of this suit is Rachel Lin Schulz.

3. The child the subject of this suit is not legitimate as to any man.

4. The natural father of the child the subject of this suit is Donald J. Kirkpatrick.

5. The natural mother of the child, Rachel Lin Schulz, has not consented to the voluntary legitimation of the child by the Respondent Cross-Petitioner, Donald J. Kirkpatrick.

6. The managing conservator of the child, Christian Homes of Abilene, Inc., has not consented to the voluntary legitimation of the child by the Respondent Cross-Petitioner, Donald J. Kirkpatrick.

7. It is not in the best interest of the child for this Court to consent to the legitimation of the child by the Respondent Cross-Petitioner Donald J. Kirkpatrick.

8. It is in the best interest of the child that the parent-child relationship between Rachel Lin Schulz and the child be terminated.

9. It is in the best interest of the child to appoint Christian Homes of Abilene, Inc., managing conservator of the child for the purpose of placing the child for adoption.

CONCLUSIONS OF LAW

1. The parent child relationship does not exist between the Respondent Cross-Petitioner, Donald J. Kirkpatrick, and the child the subject of this suit.

2. The child the subject of this suit should not be designated as the legitimate child of the father, Donald J. Kirkpatrick.

3. The father, Donald J. Kirkpatrick, should not be designated a parent of the child.

4. The parental rights of the natural mother Rachel Lin Schulz should be terminated.

5. Christian Homes of Abilene, Inc., should be appointed managing conservator of the child having all the rights, privileges, duties and powers of a managing conservator as set forth in Section 14.02 (b), Texas Family Code, and, specifically, power to consent to the adoption of the child and to make placement of the child for the purpose of adoption.

SIGNED this 24th day of September, 1981.

B. J. Edwards
JUDGE PRESIDING

Judge of the 104th District Court sitting for the 326th District Court.

In Re: Baby Girl S, A Child

No. 11-81-157-CV -- Appeal from Taylor County

Christian Homes of Abilene, Inc., brought suit to terminate the parent-child relationship of an infant girl, B.G.S. The unmarried biological father filed a cross action seeking to legitimate the child and gain her custody. Following trial before the court, judgment was entered that the parent-child relationship between the mother and B.G.S. be terminated; the father's petition to legitimate be denied and all his rights to the child be foreclosed; and Christian Homes be appointed managing conservator of B.G.S. The biological father appeals. We affirm.

In his first point of error the biological father contends that the trial court abused its discretion by denying

the petition for voluntary legitimation.

At the time of the hearing, August 8, 1981, the natural mother was only sixteen and the biological father was twenty-five years old. They had met through the father's sister and had a premarital sexual relationship for at least a year and a half before the child was conceived in April, 1980. After being aware of her pregnancy, the girl considered and discussed her alternatives with her parents and the father and chose to go to a home for unwed mothers operated by Christian Homes. She concluded after additional counseling regarding whether she should keep the child or permit its adoption that it would be in the best interest of the child to relinquish her parental right and allow the child to be adopted. After the birth of B.G.S., the mother executed an Affidavit of Relinquishment of Parental Rights pur-

suant to TEX. FAM. CODE ANN. § 15.03 (Vernon Supp. 1981).

At the hearing the biological father testified: "All I can say is I love my daughter and I want her, and she's blood, and I just can't see letting her go when I want to raise her myself." His plans included returning with her to the same small town where the illicit sexual activity occurred and included the assistance of his mother and sister in the rearing of the child. Although the biological father testified as to his readiness to pay all cost involved in the pregnancy and the delivery and care of the child and her mother, there had never existed a family relationship between himself and the child. The biological father had a form of epilepsy called grand mal which was controlled with medication.

The testimony reflects that the parents of the mother disapproved of the relationship between the mother and the biological father and forbade the consumation of a marriage relationship. It was the mother's desire that the child be adopted and reared in a two-parent Christian family. The mother herself was an adopted child and was aware of the stigma under which an illegitimate child suffers. She testified that in her opinion adoption would serve the best interest of the child. Her parents were supportive of the mother and her decision.

TEX. FAM. CODE ANN. § 13.21 (Vernon Supp. 1981) provides that in a voluntary legitimation suit where the mother or managing conservator fails to give consent to the legitimation by the biological father, the court may consent to the legitimation provided the entering of such a decree is in the best interest of

the child. (Emphasis ours)

As stated by the court in Travis County Child Welfare Unit v. Vance, 566 S.W.2d 112 (Tex.Civ.App. - Austin 1978, no writ): "It is the child's best interest, and not the interest of the biological father, which must be served by legitimation. § 13.21(c)."

The Texas Supreme Court in In the Interest of T. E. T., 603 S.W.2d 793, cert. denied, 450 U.S. 1025 (1980), considering the child's best interests said:

> It is easy to understand her decision here that it would not be in the child's best interest for her to be turned over to the nineteen-year-old father and be reared by him in the small town where the illicit sexual activity occurred. On the other hand, the best interests of the illegitimate child will more likely be served by her adoption into a family who will give her the stability of a normal, two-parent home. Moreover, adoption will remove the stigma under which an illegitimate child suffers.

We have carefully reviewed all the

evidence and find no abuse of discretion by the trial judge in denying the petition for voluntary legitimation. In the Interest of C.D.V., 589 S.W.2d 543 (Tex. Civ.App. - Amarillo 1979, no writ).

The first point of error is overruled.

In his second point of error, the biological father urges:

> Section 13.21, Voluntary Legitimation, Family Code, V.A.T.S., is unconstitutional in that it violates the equal protection and due process clause of the fourteenth amendment to the United States Constitution.

This contention has been overruled by the Texas Supreme Court in In the Interest of T. E. T., supra. There the court said:

> The narrow issue before us is whether the gender-based distinction of the Texas statutory scheme for establishing status as a parent is substantially related to the important state objective of promoting the best interest of children born out of wedlock and is substantially related to the achievement of this objective. We

hold that it is so related.

* * *

> The biological father was given timely notice of the proceedings to terminate the mother's parental rights and, in response, brought suit as permitted under the Texas Family Code to legitimate the child. He thus had the procedural due process required by Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).

The second point of error is overruled.

Next, appellant argues that the court erred in overruling his motion for amended or more specific findings of fact and conclusions of law.

The court in City of Fort Worth v. Bewley, 612 S.W.2d 257 (Tex.Civ.App. Eastland 1981, writ ref'd n.r.e.), considering such a point of error, said:

> Additional findings are not required where the requests do not relate to ultimate or controlling issues, or where they conflict with the original findings of fact which were made and filed by the trial judge. State v. Wiergate Lumber Company, Inc.,

582 S.W.2d 258 (Tex.Civ. App. - Beaumont 1979, writ ref'd n.r.e.).

In the case at bar, the additional findings and conclusions either conflict with the original findings and conclusions, or do not relate to the ultimate or controlling issue in controversy. The point of error is overruled.

Finally, in a supplemental brief the biological father contends that:

> Section 13.2., Voluntary Legitimation, Family Code, V.A.T.S., is unconstitutional in that it violates Texas Constitutional Article 1, Section 3-A, the Texas equal rights amendment.
>
> The amendment states:
>
> Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin. This Amendment is self-operative.

The court in Mercer v. Board of Trustees, North Forest Independent School District, 538 S.W.2d 201 (Tex.Civ.App. - Houston [14th Dist.] 1976, writ ref'd

n.r.e.), considered whether a regulation regarding school hair length violated the Texas Equal Rights Amendment. After thorough consideration and comparison of similar enactments by other jurisdictions as well as federal court decisions the court said:

> We cannot agree with the Supreme Court of Washington that the ERA admits of no exceptions to its prohibition of sex discrimination. Any classification based upon sex is a suspect classification, and any law or regulation that classifies persons for different treatment on the basis of their sex is subject to strictest judicial scrutiny. Any such classification must fall unless the party defending it can show that it is required by (1) physical characteristics, (2) other constitutionally protected rights such as the right of privacy, or (3) other "compelling reasons." With respect to "physical characterstics" we are simply recognizing the facts of life. For us to adjudicate that women are men would be as futile as it would be absurd. Neither the ERA nor the rights established by it require us to construe it so as to deny sexual or reproductive differences between the sexes. Nor does the ERA require that such rights so established (and so long

> denied) be enforced where they come into conflict with other basic fundamental constitutionally-protected rights such as that of privacy. To justify a suspect classification by "compelling reasons" places the burden of proof and persuasion on the party defending the classification.

We hold that TEX. FAM. CODE ANN. § 13.21 (Vernon Supp. 1981) meets the "other compelling reasons" test as set forth in Mercer and, therefore, does not violate the Texas Equal Rights Amendment. The compelling reason is the important state objective in promoting the best interest of children born out of wedlock.

As stated by the court in In the Interest of T. E. T., supra:

> (T)he State has a legitimate interest in protecting the children who are born as a result of premarital sexual activity. The mother, by virtue of her pregnancy, is automatically responsible for the child. She has the physical burdens and responsibilities of the pregnancy. She can choose to abort the child or

she may carry it full term. The State has a substantial interest in encouraging the unwed mother to properly care for the child by assuring her that her wishes as to the disposition of the child will not, absent her consent or a finding of the child's best interest, be subject to the absolute veto of the biological father. This statute is substantially related to the achievement of that interest.

On the other hand, the biological father is not automatically responsible for the child. He may not have an interest in legitimating the child. He may not promptly disclose his interest in the child. In most situations, he can wait until after the child is born before committing himself. While the mother who is unmarried and pregnant is trying to figure out what she will do with the child, the father is totally free from any responsibility with respect to the child. To classify him as a parent simply because he is the biological father would give him a powerful club with which he could substantially reduce the options available to the unmarried mother. All must agree that an unmarried fourteen-year-old high school freshman has a serious problem when she discovers she is pregnant and she needs all the options that the State can properly make available to her.

The court in In the Interest of K., 535 S.W.2d 168, cert. denied, 429 U.S. 907 (1976) said:

> There is a rational basis for the state, which has an interest in securing stable homes and supportive families for children, to distinguish between the father who has accepted the legal and moral commitment to the family and the father who has not done so....Texas law offers the biological father of an illegitimate child the opportunity to prove...that he should not be treated differently from fathers legally committed to the mothers of their children....Thus S.D.A. sought and received a fair hearing....the denial of his petition for parental status was shown to be in the best interest of the child. His rights have been respected. The rights of society and baby girl K permit him nothing more.

The point of error is overruled.

Our holding on the points of error presented by appellant make it unnecessary to consider appellee's cross-point contending that appellant did not comply with the requirements of TEX. FAM. CODE ANN. § 13.21 (Vernon Supp. 1981).

The judgment is affirmed.

/s/

RALEIGH BROWN

ASSOCIATE JUSTICE

February 11, 1982

JUDGMENT

In Re: Baby Girl S., a child	X	From the 326th
No. 11-81-157-CV	X	District Court of Taylor County.
		February 11, 1982
		Opinion by Brown, A. J.

This cause came on to be heard on the record and the same being inspected, it is the opinion of the Court that there was no error in the judgment. It is therefore ordered, adjudged and decreed that the judgment of the trial court be, and the same is hereby, in all things affirmed, in accordance with this Court's opinion. It is further ordered that the costs incurred by reason of this appeal be, and the same are hereby, taxed against appellant, Donald Kirkpatrick, principal, and Sam Moore and Jess Holloway, sureties on his appeal bond, for which let execution

issue, and that this decision be certified below for observance.

CLERK'S OFFICE - SUPREME COURT

Austin, Texas

June 16, 1982

Dear Sir:

You are hereby notified that the Application for Writ of Error in the case of IN RE: BABY GIRL S, No. C-1190 was this day refused. No reversible error.

Very truly yours,

GARSON R. JACKSON,

Clerk

THE SUPREME COURT OF TEXAS

P.O. Box 12248 Capitol Station

Austin, Texas 78711

July 14, 1982.

Mr. Sam Moore, Attorney
P. O. Box 3819
Abilene, Texas 79604

Mr. Charles E. Meyers, Attorney
104 Citizens Bank Building
Abilene, Texas 79601

Dear Sirs:

The motion for rehearing in the case of IN RE: BABY GIRL S., C-1190, was this day overruled.

Very truly yours,

/s/

Garson R. Jackson,
Clerk